

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOEL PAUL REESMAN,

V. **Petitioner,**

RON HAYNES,

Respondent.

CASE NO. C16-5925 BHS

**ORDER DECLINING TO ADOPT
REPORT AND
RECOMMENDATION AND
REMANDING**

This matter comes before the Court on the Report and Recommendation ("R&R")

of the Honorable Theresa L. Fricke, United States Magistrate Judge (Dkt. 23), and

Petitioner Joel Paul Ressman's ("Reesman") objections to the R&R (Dkt. 24).

On August 31, 2017, Judge Fricke issued the R&R recommending that the Court

dismiss the petition as time-barred. Dkt. 23. On September 11, 2017, Reesman filed

objections asserting numerous arguments, including that he is actually innocent. Dkt. 24

at 1-2.

The district judge must determine de novo any part of the magistrate judge's

disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Reesman's actual innocence claim has not been fully briefed or
4 considered. Although the Government identified the claim in its motion to dismiss, it did
5 not address the actual innocence exception to the statute of limitations. *See* Dkt. 15.
6 Reesman raised the argument in his response, Dkt. 22 at 4–7, and the Government did not
7 file a reply. Thus, Reesman has raised an exception to a time-barred petition, which has
8 not been responded to or otherwise considered. Therefore, the Court **DECLINES** to
9 adopt the R&R and **REMANDS** for further consideration.

10 **IT IS SO ORDERED.**

11 Dated this 19th day of October, 2017.

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BENJAMIN H. SETTLE
United States District Judge
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